



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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AFSCME Local 3438,  
Sullivan County Nursing Home

Complainant

v.

Sullivan County Nursing Home

Respondent

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Case No: G-0041-1

Decision No. 2007-025

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 3438, Sullivan County Employees (the "Union") filed an unfair labor practice complaint against Sullivan County Nursing Home (the "County") on January 24, 2007. The Union alleges that on November 17, 2006 the County notified the Union membership that the County had decided to completely eliminate the Baylor shifts. The Union alleges that the County refused to impact bargain before it implemented its decision to eliminate the Baylor shifts. The Union alleges that the County also talked with affected employees without the Union's involvement. The Union contends that these actions violate RSA 273-A:5, I (a), (b), (e), (g), and (i) because the County failed to bargain in good faith and refused to recognize the Union as the employees' exclusive representative and otherwise engaged in prohibited direct dealing with employees.

As remedies, the Union requests that the PELRB: 1) determine that the Union has committed an improper labor practice by failing to bargain in good faith; 2) order the County bargain in good faith concerning elimination of the Baylor shift and prior to implementation of any changes in terms and conditions of employment, and/or implementing any policy or memorandum that would invalidate any portion of the collective bargaining agreement; 3) order the County to cease and desist from directly dealing with bargaining unit employees; 4) order the County to publicly post the findings of the Board for thirty business days; 5) order the County to reimburse the Union for any and all costs and expenses incurred; and (6) Grant such other relief as the Board deems just and equitable.

The County filed its answer denying the Union's charge on February 8, 2007. While the County generally admits to the factual chronology as described in the Union's complaint it denies that it has committed any improper labor practice. By way of further answer, the County states that it commenced the use of a Baylor shift in 2005, that Baylor shift scheduling is not addressed in the current or prior collective bargaining agreement, and that the County has reverted to a long established prior practice of scheduling which is consistent with the present and prior collective bargaining agreements. The County asserts it should not be required to impact bargain when the subject of the demand for impact bargaining is not a violation of the collective bargaining agreement. The County also contends that the Union has not alleged a violation of the collective bargaining agreement.

Accordingly, the County requests that the PELRB dismiss the Unfair Labor Practice Charge and otherwise deny all the Union's requests for relief.

The undersigned Hearing Officer conducted a pre-hearing conference on February 21, 2007 at the PELRB offices, Concord, New Hampshire.

#### PARTICIPATING REPRESENTATIVES

For the Union: Michael Maccaro, Esq.

For the County: Marc Hathaway, Esq.

#### ISSUES PRESENTED FOR BOARD REVIEW

Did the County improperly refuse to engage in impact bargaining and improperly engage in direct dealing with employees in violation of RSA 273-A:5 I (a), (b), (e), (g), and (i)?

#### WITNESSES

For the Union:

1. Elen Stone
2. Bryan Lamirande
3. Elisabeth Koski

For the County:

None. No pre-hearing worksheet filed.

Subject to the decision below, both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

## EXHIBITS

For the Union:

1. Collective Bargaining Agreement 7/1/00-6/30/07
2. Notice from Management dated 11/17/06
3. Letter to Management dated 11/29/06
4. E-mail from Peter Farrand to Elisabeth Koski dated 7/17/06

For the Town:

None. No pre-hearing worksheet filed.

Subject to the decision below, both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

## LENGTH OF HEARING

The time set aside for this hearing will be one-half (½) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

## DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before March 8, 2007, in attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. In the event that agreement is reached to submit the case by written submission, the parties shall forthwith file a joint statement indicating such agreement and include a proposed schedule for the parties' filings.
2. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before March 8, 2007 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB on or before March 8, 2007.
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing

representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

4. The County shall forthwith file its pre-hearing worksheet or risk the exclusion of its witnesses and exhibits at trial.

5. At the pre-hearing it became apparent that the County's attorney was not in possession of all necessary information at the time he prepared and filed his answer to the complaint. Accordingly, the County shall file an amended answer to the complaint on or before March 8, 2007 based upon the information that has more recently come to the County's attention.

6. The Union is not required to file an objection to a motion to dismiss unless the County files a separate pleading entitled "Motion to Dismiss" requesting such relief.

7. It is the hearing officer's understanding that the parties will be able to stipulate to most of the facts in this case, and this will be reflected in a filing required to be made on or before March 8, 2007. At the time of the filing the parties shall also indicate whether a further pre-hearing conference is, in their view, necessary, and their preference for conducting such a further conference by telephone or at the PELRB.

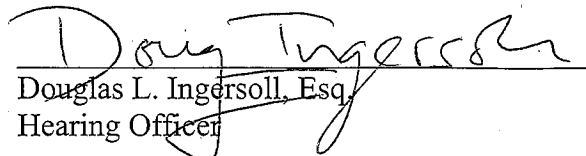
Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

**March 27, 2007 @ 9:30 AM**

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

February 23, 2007.

  
Douglas L. Ingersoll, Esq.  
Hearing Officer

Distribution:

Joseph DeLorey, Esq.

Michael Maccaro, Esq.

Marc Hathaway, Esq.